

Remarks

CLAIM REJECTIONS – 35 U.S.C. § 103(a)

Claims 1, 3, 4, 6-10, 12-14 and 16-19

Claims 1, 3, 4, 6-10, 12-14 and 16-19 were rejected as being unpatentable over U.S. Patent No. 5,953,314 issued to Ganmukhi, et al (*Ganmukhi*) in view of U.S. Patent No. 5,802,047 issued to Kinoshita (*Kinoshita*) and further in view of U.S. Patent No. 6,442,135 issued to Ofek (*Ofek*) and further in view of U.S. Patent No. 6,661,790 issued to Nolan et al. (*Nolan*). Claim 10 has been canceled. Therefore, the rejection of this claim is moot. For at least the reasons set forth below, Applicant submits that claims 1, 3, 4, 6-9, 12-14 and 16-19 are not rendered obvious by *Ganmukhi*, *Kinoshita*, *Ofek*, and *Nolan*.

Independent claim 1 recites, in part, the following:

...wherein the first and second control units further independently maintain network status information;

Similarly, claim 12 recites:

maintaining network status information independently by each of the control units;

Thus, Applicant claims maintaining network status information independently by the first and second control units. Claim 18 recites similar limitations.

Ganmukhi discloses a control processor switchover for a telecommunications switch. *Kinoshita* discloses an inter-LAN connecting device with a combination of routing and switching functions. *Ofek* discloses a method for delay monitoring, policing,

and billing data packet traffic in a packet switching network. *Nolan* discloses a ring architecture wherein chips are connected in a chain to receive and forward packets. Neither *Ganmukhi* nor *Kinoshita* nor *Ofek* nor *Nolan* discloses maintaining network status information independently by each of the control units.

The Office action cites *Ganmukhi* as disclosing that the first and second control units each independently maintain network status information. Applicant respectfully disagrees with this characterization of *Ganmukhi*.

Ganmukhi discusses both an active and a non-active or standby processor card. See column 3, lines 12-17. Thus, according to *Ganmukhi*, only one processor card is used at a time. Furthermore, the active processor card is explicitly distinguished from the standby processor card in that it has “*exclusive* control over central resources and internal resources...” Column 3, lines 16-18 (emphasis added). Thus, in order to practice the invention as described in *Ganmukhi*, only one processor card can have control over central and internal resources. This means that if the active processor card fails, switching over to the standby processor card requires updating the standby processor card, causing system delay. In contrast, claim 1 recites that the first and second control units independently maintain network status information. *Ganmukhi* does not teach or disclose first and second control units that independently maintain network status information.

Kinoshita, *Ofek*, and *Nolan* are not cited to teach nor do they teach first and second control units that independently maintain network status information. Therefore, no combination of *Ganmukhi*, *Kinoshita*, *Ofek* and *Nolan* teaches or suggests the invention as claimed in claims 1, 12 and 18.

Claims 3, 4 and 6-9 depend from claim 1. Claims 13, 14, 16 and 17 depend from claim 12. Claim 19 depends from claim 18. Given that dependent claims necessarily include the limitations of the claims from which they depend, Applicant submits that claims 3, 4, 6-9, 13, 14, 16, 17 and 19 are not rendered obvious by combination of *Ganmukhi*, *Kinoshita*, *Ofek*, and *Nolan* for at least the reasons set forth above.

Claims 5 and 15

Claims 5 and 15 were rejected as being unpatentable over *Ganmukhi* in view of *Kinoshita*, *Ofek*, and *Nolan* and further in view of U.S. Patent No. 6,473,421 issued to Tappan (*Tappan*). The Office Action states that *Tappan* discloses a switching system that uses OSPF for routing packets. Whether or not *Tappan* discloses such a system, *Tappan* does not disclose a first and second control unit that independently maintain network status information. Therefore, *Tappan* does not cure the deficiencies of *Ganmukhi*, *Kinoshita*, *Ofek* and *Nolan*. Therefore, no combination of *Ganmukhi*, *Kinoshita*, *Ofek*, *Nolan* and *Tappan* can teach or suggest the invention as claimed in claims 5 and 15.

Claim 11

Claim 11 was rejected as being unpatentable over *Ganmukhi* in view of *Kinoshita*, *Ofek*, and *Nolan* and further in view of U.S. Patent No. 5,481,673 issued to Michelson (*Michelson*). The Office Action states that *Michelson* disclose a switching system wherein status information is stored in routing tables. Whether or not *Michelson* discloses such a system, *Michelson* does not disclose a first and second control unit that

independently maintain network status information. Therefore, *Michelson* does not cure the deficiencies of *Ganmukhi*, *Kinoshita*, *Ofek* and *Nolan*. Therefore, no combination of *Ganmukhi*, *Kinoshita*, *Ofek*, *Nolan* and *Michelson* can teach or suggest the invention as claimed in claim 11.

Claim 20

Claim 20 was rejected as being unpatentable over *Ganmukhi* in view of *Kinoshita*, *Ofek* and *Nolan* and further in view of U.S. Patent No. 6,147,996 issued to Laor (*Laor*). The Office Action states that *Laor* discloses a switching system that performs layer 2 and layer 3 switching. Whether or not *Laor* discloses such a system, *Laor* does not disclose a first and second control unit that independently maintain network status information. Therefore, *Laor* does not cure the deficiencies of *Ganmukhi*, *Kinoshita*, *Ofek* and *Nolan*. Therefore, no combination of *Ganmukhi*, *Kinoshita*, *Ofek*, *Nolan* and *Laor* can teach or suggest the invention as claimed in claim 20.

Motivation to Combine References

Additionally, Applicant submits there is no motivation to combine the references cited in the Office action. The Examiner cannot “pick and choose among the individual elements of assorted prior art references to recreate the claimed invention.” *SmithKline Diagnostics, Inc. v. Helena Laboratories, Corp.*, 859 F.2d 878, 887, 8 USPQ2d 1468, 1475. Furthermore, the Examiner “has the burden to show some teaching or suggestion in the references to support their use in the particular claimed combination.” *SmithKline Diagnostics, Inc. v. Helena Laboratories, Corp.* at 1475.

Specifically, with respect to the independent claims, the Office Action cites *Ofek* as disclosing a system where a switch is given the ability to multicast packets to output its ports simultaneously, and states:

It would have been obvious to one skilled in the art at the time of the invention to implement this feature in *Ganmukhi* because transmitting packets simultaneously is faster than transmitting packets one-by-one, thereby making the *Ganmukhi* system operate quicker.

Ganmukhi does not suggest a need or a desire for the system to “operate quicker” as implied in the Office action. *Ganmukhi* is concerned with preventing switch failure and not with operation speed. Furthermore, neither *Ganmukhi* nor *Ofek* offers anything to suggest that multicasting packets from a virtual pipe as described in *Ofek* would motivate one of ordinary skill in the art to combine the multicasting of packets with the system described in *Ganmukhi* to prevent switch failure. Applicant submits that the Office action has not established that a skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed. See *In re Kotzab*, 217 F.3d at 1371. Therefore, Applicant submits that the rejection of the independent claims under 35 U.S.C. § 103 is improper and cannot be maintained for at least the reason that there is no motivation to combine the references.

CONCLUSION

For at least the foregoing reasons, Applicants submit that the rejections have been overcome. Therefore, claims 1, 3-9, and 11-20 are in condition for allowance and such action is earnestly solicited. The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present application.

Please charge any shortages and credit any overcharges to our Deposit Account number
02-2666.

Respectfully submitted,
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